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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No. 5709 of 2015(O&M)  
Date of Decision: 31.08.2016

KARNAIL SINGH AND ORS.

....Appellants

Vs

LACHMI DEVI

....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Om Parkash Gupta, Advocate,  
for the appellants.

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**RAJ MOHAN SINGH, J.**

Plaintiff is in second appeal against concurrent judgment and decrees passed by the courts below in a suit for specific performance.

Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 5.07.2006 in respect of two bighas of land for consideration of Rs. 1,80,000/-. It was asserted that the land was already mortgaged with father of the plaintiff for a sum of Rs. 32,000/- vide registered mortgaged deed dated 08.07.1997. The defendant was in need of money, therefore, an agreement to sell was executed between the parties. An amount of Rs. 1,36,000/- was paid towards earnest money and 30.12.2006 was fixed as target date for execution of sale deed on payment of

remaining sale consideration of Rs. 12,000/-. With this background, suit came to be filed.

Defendant contested the suit. Agreement to sell was denied rather it was claimed that the same was result of undue advantage. Signature and thumb impression of the defendant were obtained on blank paper as security for payment of redemption money. Defendant highlighted that there was abnormal spacing for alleged agreement to sell which made agreement to sale to be totally illegal and fraudulent.

After completion of pleadings, issues were framed and both the parties led evidence. Trial court dismissed the suit by holding under issue no. 1 that the plaintiff was not entitled to the performance of agreement to sell dated 05.07.2006 and was not also entitled to permanent injunction. On the basis of findings recorded under issue no. 1, other issues were accordingly decided and suit was dismissed vide order dated 17.07.2013. Plaintiff remained unsuccessful before the lower Appellate Court in appeal which was dismissed vide judgment and decree dated 14.08.2015.

I have considered the submission made by learned counsel for the appellant.

Evidently, no receipt regarding payment of earnest money could be proved on record. No evidence was led in respect of passing consideration in view of recital made in agreement to sell. Plaintiff could not establish that he had given ₹1,36,000/- as earnest money and balance consideration of ₹12,000/- after deducting the mortgage money to the extent of ₹32, 000/- which the defendant owed to the father of the plaintiff. It has come on record that a

petition for redemption was filed by Lachmi Devi i.e. Ex. D-1 on 15.06.2007 for redemption of mortgage which was created by mortgage deed Ex. D-4. The land was under mortgage with Ajmer Singh who was none else than the father of the plaintiff. The plaintiff entered into an agreement to sell knowing fully well about the encumbrance on the property and still no reference was made in respect of that encumbrance in agreement to sell. The thumb impression of Lachmi Devi were towards left side of the agreement Ex. P-3. In normal circumstances, the thumb impression has to be on the right side of the agreement to sell. None of the attesting witness could depose in respect of place where money had exchanged hand between the parties. Even the availability of money with the plaintiff could not be proved satisfactorily as no evidence was led by the plaintiff to show that the money was available with the plaintiff. The bald statement that father and brother gave Rs. 80,000/- and the plaintiff also took money from Commission Agent could not be substantiated by way of any convincing evidence. Statement of Naresh Kumar, attesting witness was discrepant inasmuch as that he deposed that his signatures were obtained by Amar Singh. The agreement to sell was made by Amar Singh, Advocate whereas Brij Bhushan Sharma admitted that he himself scribed the document and Amar Singh, Advocate only attested the agreement which was not typed in his presence. Brij Bhushan Sharma initially appeared as PW-2 and again appeared as PW-5 on 22.05.2013 would give different discrepant versions if cumulatively assessed with reference to other evidence.

Both the courts have appreciated the evidence brought on record by the plaintiff and held that the evidence is not sufficient to decree the suit. The contradictions in the testimonies of Naresh Kumar, Brij Bhushan Sharma and Amar Singh raised serious suspicion in respect of genuineness of agreement to sell. These statements if read in conjunction with no evidence regarding passing of consideration, non-mentioning of encumbrance of mortgage in the agreement to sell would make the transaction totally suspicious and fraudulent. The abnormal spacing in the agreement to sell and material irregularity viz-a-viz state of thumb impression of the defendant on agreement to sell would make the agreement to sell totally shrouded with suspicious circumstances. Consideration was one of the incidence of agreement to sell. Passing of consideration vide receipt of earnest money could not be proved with reference to any evidence of scribed, attesting witness.

The finding of fact recorded by the courts below cannot be faulted with. In considered view of this Court, there cannot be any re-appreciation of evidence at the stage of regular second appeal.

Courts below have not misread the evidence while returning findings on different issues nor the findings can be said to be perverse by any stretch of imagination. The substantial questions of law as framed in the ground of appeal do not arise for consideration of this Court in view of findings of fact recorded by the courts below. Even otherwise the questions so framed are pure questions of fact.

No questions of law much less substantial questions of law arise in the controversy. The appeal is totally found to be bereft of merit and the same is accordingly dismissed.

(RAJ MOHAN SINGH)  
JUDGE

31.08.2016  
*sumit*

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|---------------------------|--------|
| Whether Reasoned/Speaking | Yes/No |
| <i>Whether</i> Reportable | Yes/No |